



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 16, 2022

IN THE MATTER OF:

Appeal Board No. 623591

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determinations, disqualifying the claimant from receiving benefits, effective September 28, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, disqualifying the claimant from receiving benefits, effective September 28, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 28, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed April 29, 2022 (), the Administrative Law Judge overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed full-time for over twenty-three years as a senior enroller-eligibility for a hospital organization. On or about September 2021, New York State mandated that all hospital employees be vaccinated against COVID -19. In September 2021, the employer notified all hospital employees, via email, that they were to be vaccinated for COVID -19 by September 24, 2021, or face discharge.

The claimant is a born-again Christian and refused the vaccination for COVID-19 due to her religious beliefs. The claimant requested a religious exemption from her employer. The employer denied the claimant a religious exemption from vaccination. The claimant did not receive the vaccination for Covid-19 by September 24, 2021. The employer then discharged the claimant on September 27, 2021.

OPINION: The credible evidence establishes that the claimant's employment ended because she refused to receive the COVID-19 vaccination by September 24, 2021, a condition of her continued employment. The claimant was aware of the requirement and its applicability to her employment as a healthcare worker. The claimant was also aware that she could not continue her employment without complying with the mandate.

A provoked discharge occurs when a claimant voluntarily violates a legitimate, known obligation, leaving the employer no choice but discharge. A provoked discharge is considered a voluntary leaving of employment without good cause and constitutes a disqualification from the receipt of benefits. (See Matter of DeGrego, 39 NY2d 180 [3d Dept.1976]).

In the case herein, the obligation in question was compliance with the employer's vaccine requirement, which was put in place to abide by New York State's mandate that all healthcare workers be vaccinated against COVID-19 during the worldwide pandemic. Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease. (See Matter of Garcia v. New York City Dept. of Health & Mental Hygiene, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; Matter of C.F. v. New York City Dept of Health & Mental Hygiene, 191 AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and Matter of New York City Mun. Labor Comm. v. City of New York, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts," citing New York State Inspection, Sec. & Law

Enforcement Empls., Dist. Council 82 v. Cuomo, 64 NY2d 233, 237-40 [1984]).

As a result of the severity of the ongoing COVID-19 crisis and healthcare providers' need to protect the health of employees and patients, the emergency regulation, requiring all healthcare workers to be vaccinated against COVID-19, was justified by a compelling governmental interest. Therefore, we find that the employer's requirement that the claimant be vaccinated was a legitimate, known obligation, and that the employer had no choice but to end the claimant's employment when she declined the vaccination. The claimant's decision to forgo a COVID-19 vaccination, despite the mandate to do so, and her awareness of the consequences for failing to do so, left the employer no choice but to terminate the claimant's employment.

As to her objection based upon religious concerns, the Supreme Court of the United States has held

that "an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." (See *Employment Div. v. Smith*, 494 US 872, 879

[1990]). The Court determined that, so long as the law is neutral and not aimed at a specific religion, generally applicable, and pertaining to an area of law that the government can regulate, it cannot be preempted by a religious practice. There is no allegation that the state cannot regulate the healthcare industry, that the law is not generally applicable to those in that industry, nor that it targets a specific religion.

Further, the Second Circuit, in *We the Patriots USA, Inc. v. Hochul*, 2021 U.S. App. LEXIS 32921 (2d Cir 2021), upheld New York's COVID-19 vaccine mandate for hospital employees without allowing for religious exemptions. Additionally, the U.S. Supreme Court denied an application for injunctive relief in a challenge to New York State's law removing religious exemptions from its COVID-19 vaccine mandate for hospital workers. *Dr. A. v. Hochul*, 142 S. Ct. 552 (U.S. December 13, 2021) (No. 21A145), cert. denied 142 S. Ct. 2569 (U.S. June 30, 2022) (No. 21-1143).

Finally, even if the doctrine of provoked discharge did not apply, the Court has held that a claimant, who fails to take a step that is reasonably required for continued employment, has left employment without good cause. (See *Matter of Wackford*, 284 AD2d 770 [3d Dept 2001]). As the claimant was aware that her

refusal to get vaccinated would result in her separation from employment, we conclude that the claimant voluntarily separated from her employment under disqualifying circumstances.

As the claimant is disqualified on the basis of voluntary separation, there is no need to rule on the alternate determination of misconduct.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 28, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER